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REGISTRATION OF KURIS UNDER THE COMPANIES ACT.

Ramasami Bhagavathar v. *Nagendrayyan, I. L. R.*, 19 *M*, 31.

The decision of the Madras High Court (*Shephard* and *Best JJ.*) in the above case has created a greater amount of anxiety and consternation in Southern India than most other cases; and in our opinion the judgment of the learned judges is in reality not responsible for the mischief. It is the failure to understand the *ratio decidendi* in the case and the misapplication of it to cases that bear no real analogy to it that have induced the failure of many useful undertakings, the violation of their agreements even by honest men, and the apprehension of ruin in many a household. We propose therefore in this article to point out the true scope of the decision in the case and to show that it ought not to lead to the serious consequences apprehended in several districts of the Madras Presidency. Malabar perhaps is the district that most largely abounds in Kuris and the one in which the number of people and the amount of money affected by the decision would perhaps be greater than probably in any two districts put together. We shall therefore first give a brief account of Kuris in Malabar. We must in doing so premise that it is important in the first degree to realise that Kuris differ from each other in their nature and incidents and that rules of law applicable to Kuris of one class would be entirely inapplicable to another. In every case coming before a court, it will be its first duty to investigate the nature of the Kuri concerned before determining whether the provisions of S. 4 of the Indian Companies Act are applicable to it. The class of Kuris mentioned in *Mr. Logan's Manual of Malabar* and referred to by *Mr. Justice Shephard* in the decision under notice is beyond doubt the least important, and is fast dying out, if not already extinct. We shall quote *Mr. Logan's* own description of it

"Another curious custom has come down from ancient times and is still flourishing, though the mutual confidence on which it relies for its proper effects shows signs of breaking down and is cited as a degeneracy of Malayali manners. Any one desirous of raising a considerable sum of money for some temporary purpose invites his friends to join him in what is called a *Kuri* or *lottery.* Chance enters very little, however, into the arrangement, and it would be a better term to call the members a mutual loan society. The organiser of the Kuri gets a certain number of his friends to subscribe a certain amount of money or of rice husked or unhusked as the case may be. The friends bring their contributions to his house, where they are hospitably entertained, and by lot the person is selected to whom similar contributions from all present, including the organiser of the Kuri, are to be made on a certain date then and there fixed. This individual in turn hospitably entertains his friends when they come with their contributions. A third person is then selected and the same thing comes off at his house. And so it goes on until every one of the original members or his heirs has in turn reaped the benefits of the contributions of his friends. The arrangement is of obvious benefit in several ways to those concerned." Mr. Logan is mistaken in supposing that this institution is flourishing. Owing to its being in a large measure obsolete it is now difficult to say whether this kind of Kuri was intended to create any legal rights and obligations or whether those who paid their contributions to a member were content to rely on the social sanction to enforce the payment of similar contributions by each of those from whom he received them. *Mr. Wigram* in his commentaries on Malabar Law quotes *Mr. Graeme's* description of a similar institution which *Mr. Graeme* speaks of as *Kuri Kalyanam. Mr. Graeme* description contains the following curious passage "To any person who evades the invitation and does not send the proper present of money and fruit, a small vessel of arrack and the bone of a fowl are sent in derision to shame him into a *more* liberal spirit and he is desired to eat and drink them and to return the money he formerly received. This in general was sufficient to ensure a compliance with the custom." *Mr. Wigram* observes "In A. S. 643 of 1880 (South Malabar) I held that the obligation was moral only, and was not enforceable at law. There is a similar decision by Mr. Holloway as Sub-Judge

of Calicut (Zillâh Dec. Calicut Sub-Court January 1857 p. 12," As far as we are aware, this kind of Kuri is also practically obsolete and it is not easy to say whether these invitations could, as Mr. Logan observes, constitute Mutual Loan Societies in the legal sense of that term. Mr. Wigram quotes also Mr. Graeme's description of a kind of Kuri called Changati Kuri. Mr. Graeme calls it "a lodge or meeting of friends." It was formerly very common in Malabar among the natives and is still partially kept up for the purpose of discussing any particular subject or of enquiring into the conduct of any individual. It is not confined to people of the same caste but may be composed of Nayars, Tiers and Moplas. Besides promoting social intercourse it has a tendency to prudential consequences. It induces economy. The description which follows of the Changati Kuri shows that it resembled the modern Kuri in many respects. One passage in it is worth quoting as it is largely true even at the present day. "The contempt of its regulation can only be attempted to be remedied by a tedious, vexatious, and expensive appeal to a judicial tribunal, an appeal likely to be more particularly ineffectual from the compact of the parties being rather understood than expressed, and founded more upon a sense of honour than upon law or agreement." *Mr. Wigram* is content to accept *Mr. Graeme's* description of Changati Kuris written in 1822 as a fair description of the lotteries of the present day with this exception that the custom of the prize-holder giving a social entertainment has fallen into disuse and that the society is now a provident club conducted on business principles. It is to be regretted that the learned author did not consider it necessary to give an independent description of Kuris as they now exist, because it is still true that the compact of the parties is rather understood than expressed, though there is usually a document setting out the principles on which the Kuri is conducted and signed by all the ticket-holders.—The following description will, we think, be true of most Kuris as they now exist in the District.

The most important individual in the kuri is the person called *Kutti* (*i.e.*, head or stump) Kuttimoopan (moopan means head) called Karaswan in Tinnevelly or Muthalpad in Madura. It is he that starts the Kuri and he does so in his own interest. His object is to get a lump sum of money which he may pay off

in small instalments. Sometimes it is intended for gain, at other times his object is to meet a large demand which he could not conveniently do otherwise. The *modus operandi* is as follows. He divides the amount of Rs. 5,000 into (say) 20 shares of Rs. 250 and asks 19 persons, each to pay one share. Each is to pay the above sum of Rs. 250 once in a certain period, which may be a month, or 2 months. In the case of large amounts like 250 the payment is generally once in 6 months or a year. Let us take it to be 6 months. At 250 Rs. for 6 months, the payment of the full amount of Rs. 5,000 will take ten years. It will be seen that every six months, the Kutti gets Rs. 5,000. The first collection he appropriates to himself, for that is his object in starting the concern. At the end of 6 months, lots are cast amongst the 19 shareholders, to determine to whom the Kutti should then pay Rs. 5,000. The Kutti is bound to pay the prize-winner the sum of Rs. 5,000 at once. It is his look-out to collect the amount due from each subscriber; whether he succeeds in collecting it or not he must pay the prize winner, at the expiration of every 6 months until the end of the 10 years. It will be apparent that every subscriber including the Kutti will have paid Rs. 5000 at the end of the 10 years and received the same sum. The payments are made in instalments of 250; but each subscriber gets the whole sum of Rs. 5,000 in a lump. Some of course get it very much earlier than others, and are consequently able to earn a large amount of interest on the Rs. 5,000 before the expiration of the Kuri. At 9 p. c. the sum will yield Rs. 225 for 6 months, so that after one has drawn the prize he can pay up future instalments by means of the interest alone on the amount. Now the principal points to be noticed in connection with the Kuri are:— 1 The sole responsibility of collecting the subscription is on the Kutti and all losses caused by defaults in payment are to be borne by him. The other subscribers have nothing to do with them. The Kutti therefore exacts heavy fines from defaulters, often at the rate of 1 pie or 2 pies per diem per Rupee. All profits arising from such fines also entirely belong to him. If a subscriber becomes insolvent, the Kutti is still bound to make up the subscription due by him. 2. It is open to the Kutti to accept from any one a transfer or relinquishment of his share and to transfer it to any one else or keep it himself. The other shareholders have absolutely no voice in the matter. 3. Prize-winners are not entitled

to receive the prize, unless they give proper security for the payment of their future subscriptions. Whether he will demand security in any particular case rests entirely with himself, as it concerns only himself. The prize-winner's right to the prize is only against the Kutti ; the subscribers have no concern in the matter. 4 As a rule persons who become unable to continue their subscriptions lose their right to the prize, and are entitled to get back the actual amount they have advanced on the termination of the full period of the Kuri. In any event they have to look entirely to the Kutti for the payment of the amount, and other subscribers are in no way responsible for it. 5. It is needless to say that the subscribers have no right of control over the Kutti. Each subscriber has the right to receive the prize when he draws it, provided he gives due security for the future instalments of subscriptions due by him. All subscribers have similar rights and obligations but no joint rights or liabilities of any sort and 6.—They have absolutely no rights or obligations whatever *interse*.

We may add one or two details to make the description complete. Very often to compensate in some measure for the disadvantage suffered by those who draw prizes late, the Kutti stipulates for a deduction of a discount of a small sum (say 500 out of the 5,000) from the amount of the prize and distributes it amongst those who have not yet drawn prizes. A share is sometimes held by two or more persons, and where this is done with the consent of the kutti, each of these owners of a fraction of a share is responsible only for the payment of his share of the subscriptions and is entitled to receive his share of the prize at the due time without reference to those who own the share with him; for all practical purposes he is an independent subscriber. Usually, the kutti issues a document setting out the conditions of the kuri and takes the signature of each subscriber in token of his acceptance of the same. The document is inscribed on a 8 annas stamp paper as an agreement.

We think it will be clear from the above that there is no mutual responsibility at all amongst the subscribers. Each one of them enters into a contract with the Kutti, and looks to him alone for getting his prize and is responsible only to him for discharging his obligations as a subscriber and the Kutti deals

directly with each shareholder and does not look to other shareholders for compelling any individual to pay up his subscription or act otherwise in accordance with the rules of the Kuri. As a matter of fact, one would be averse to taking shares in a Kuri where the subscribers are not solvent, but this is not because he depends on them in any way, but merely because he is aware that defaults on the part of a subscriber would make it difficult for the Kutti to fulfill his own obligations to the subscribers and their own risk is consequently increased. Before passing on to examine whether the decision in *Ramasami Bhagavathar* v. *Nagendrayyan* has any bearing on Kuris, we have to invite attention to a new species of Kuris that has recently come into existence which is called Lelakuri or Elakuri or Auction Kuri. The main feature of it is that the prize-winner on each occasion is not determined by casting lots; but the prize is put up to auction and offered to the subscriber who offers the largest discount. This discount is distributed as usual amongst those who have not drawn prizes. The result is that those who are in need of money offer large discounts, while those who can afford to wait often make very large profits. Finally we must observe that recently owing to the losses sustained by subscribers in many Kuris consequent upon the failure of the Kutti, resort has sometimes been had to the real joint-stock system. A mutual loan society is formed, a secretary is appointed to carry on the operations of the society, but his actions are controlled by the whole body, and the concern is regulated according to rules framed by all the subscribers. Unfortunately the secretary in such a case is also called Kutti or Kutti-moopan, and the similarity in name has often the result of confounding things which are essentially dissimilar. So far as Malabar is concerned, Kuris on the joint-stock system are, we believe, still rare. There is no doubt that with the increase of mutual confidence they will increase in number and there will be an improvement upon the system in vogue, but only when the concern is large. But it is apparent that the two are very different, and this is really the most important fact to be borne in mind in deciding whether S. 4 of the Indian Companies Act is applicable to Kuris.

The section is as follows :—" No company, association, or partnership consisting of more than ten persons shall be formed for the purpose of carrying on the business of banking, unless it is

registered as a company under this Act, or is formed in pursuance of an Act of Parliament or some other Act of the Governor-General in Council or by Royal Charter or Letters Patent, and no company, association, or partnership consisting of more than 20 persons shall be formed for the purpose of carrying on any other business that has for its object the acquisition of gain by the company, association, or partnership, or by the individual members thereof, unless it is registered as a Company under this Act, or is formed in pursuance of some other Act or Letters Patent." Now in order that the latter part of the Section may apply (1) the body in question must be a Company, Association or Partnership (2) the number of persons composing the body must be more than 20 (3) the object must be the acquisition of gain either by the body or by the members thereof. In the case under consideration, the Kuri or fund appears to have been a company with a 'stakeholder' and the only question raised and decided is whether the 3rd of the above conditions was satisfied *i.e.*, whether the object of the Company was the acquisition of gain by the Company or by the members thereof. The document for future instalments was executed by the prize-winner in favour of all the subscribers of the fund. This shows conclusively that the right to receive subscriptions was joint in all the subscribers, and that in fact they were partners. It could not therefore apparently be disputed that the fund was a Company. The learned Judges held that the object was the acquisition of gain. Now we submit, that in the case of Kuris in Malabar and elsewhere there is no Company, Association or Partnership at all and in consequence the decision in Ramasamy Bhagavathar's case is not applicable to them, and the question whether the acquisition is either *the object* or *one of the objects* in view does not arise. After the description above given, it needs hardly any argument perhaps to show that a Kuri is not a partnership. *Mutual agency* which is the test of partnership is absolutely wanting. In fact the subscribers do not deal and have no legal relation with each other. Each of them deals with the Kutti, looks to him alone for his money and is responsible only to him for the payment of his subscription. They have similar interests and a similar end in view, but no joint rights or obligations, or any mutual rights or obligations. Can the subscribers and the Kutti then be said to form a *Company* or an *Association*. These two words have been so clearly

and exhaustively explained by the Court of Appeal in *Smith v. Anderson* 15 Ch. D 247 that we are relieved from the necessity of doing anything more than quoting the exposition of the learned Lords Justices who took part in the decision of the case.

The facts of the case in brief were as follows :—

Shares in a number of Submarine Telegraph Companies of the aggregate nominal amount of 400,000 £ were purchased by subscriptions, and vested in trustees. Each subscriber received for every 90 £ subscribed, a certificate for the nominal amount of 100 £, and a deferred coupon for one 4,200th part of the funds, the number of certificates being 4,200 ; the trusts of the funds were declared by a deed between the trustees and a covenantee on behalf of the certificate-holders. The trustees were to apply the income of the shares in payment of interest at 6 per cent. on the nominal amount of the certificates, and apply the surplus in redeeming the certificates.

It was provided that the trustees might, at their discretion, sell any of the shares, if they could be sold, at a premium of not less than 30 per cent over the price given for them, but that, except in that case, none of them should be sold, unless at a meeting of the trustees it was unanimously resolved to be for the interest of the certificate-holders that shares to be specified in the resolution should be sold. The proceeds of every sale were to be applied in the redemption of certificates, unless the trustees by a unanimous resolution, confirmed by a meeting of certificate-holders, determined to reinvest in Sub-marine Telegraph shares. Meetings of the certificate holders were to be held for the purpose of receiving reports from the trustees on the affairs of the trust, of appointing auditors, of appointing new trustees in the place of those who should die, retire, or become incapable to act. After the redemption of the certificates, the funds in hand were to be divided among the holders of the deferred coupon. The certificate-holders were more than twenty in number. The question arose, whether this was an association that required to be registered.

Under the Companies Act, S. 4. Jessel M. R. following his own decision in *Sykes* v. *Beadon,* 11 Ch. 170 held that the certificate-holders formed a Company requiring to be registered. The Court of Appeal reversed the decision, and the exposition of the

Lords Justices of the meaning of the words *Company* and *Association* in S. 4 is most instructive. Lord Justice *James* said "I cannot understand what the difference is between a *Company* and an *Association*. The word "association" in the sense in which it is now commonly used is etymologically inaccurate for "association" does not properly describe the thing formed, but properly and etymologically describes the act of associating together, from which act of associating there is formed a company or partnership. But I believe that according to the vernacular we use on these subjects, the difference which the Act intended to draw between a Company or Association and an ordinary Partnership is this:—An ordinary Partnership is a partnership composed of definite individuals, bound together by a contract between themselves to continue for some joint object, either during pleasure or during a limited time, and is essentially composed of the persons originally entering into the contract with one another. A Company or Association (which I take to be synonymous terms) is the result of an arrangement by which parties intend to form a partnership which is constantly changing, a partnership to-day consisting of certain members, and to-morrow consisting of some only of those members along with others who have come in, so that there will be a constant shifting of the partnership, determination of the old and a creation of the new partnership and with the intention that, so far as the partners can by agreement between themselves bring about such a result, the new partnership shall succeed to the assets and liabilities of the old partnership. This object, as regards liabilities, could not in point of law be attained by any arrangement between the persons themselves, unless the person contracting with them authorised the change by a novation or unless by special provisions in Acts of Parliment, sanction was given to such arrangements." Later on his Lordship observes "I cannot find that the deed constitutes any association whatever between the persons who are supposed to be *socii*. One man goes with 90 £ in his hands and buys from the trustees a 100 £ certificate with all the chance of a profit attaching to it. Another man goes the next day and takes his 90 £ to the same people and gets from them another certificate by which he gets a right to share in the funds which they have in hand,

The first man knows nothing of the second; and the second knows nothing of the first. They have never come to any arrangement whatever as between themselves. There never has been anything creating any *mutual rights or obligations between those persons.* They are from the first entire strangers who have entered into no contract whatever with each other, nor has either of them entered into any contract with the trustees, or any trustee on behalf of the other, there being nothing in the deed pointing to a mandate, or delegation of authority to anybody to act for the certificate-holders as between themselves, and nothing, as it appears to me, by which any liability could ever be cast upon the certificate-holders, either as between themselves, or as between themselves and any body else. Therefore, I cannot arrive at the conclusion that the certificate-holders form an association within the meaning of this Act of Parliament, any more than the persons who subscribe for debentures in a railway, or the Bolivian bond-holders (whose case was before us in *Wilson* v. *Church* 15 Ch. D. 1.) or the creditors in *Cox* v. *Hickman* 8 H. L., 268." His Lordship adds further on:—"Now people cannot be said to carry on business, when it is utterly inconsistent with what they have done, and what they have said, and inconsistent with the nature of the whole transaction, that they should be parties directly or indirectly, either by themselves or through any agent of them, to any contract, or be liable to any act of misfeasance or neglect of any manager, agent or servant."

Lord Justice Bowen observes that in order to come within clause 4. "*there must be a joint relation of more than twenty persons for a common purpose, which common purpose, as it seems to me, must be the performing jointly a succession of acts.* * * * Moreover, they must be so related together as to form a Company or a Partnership or an Association. I confess I have some difficulty in seeing, how there could be an Association for the purpose of carrying on a business which would be neither a Company nor a Partnership. But I should hesitate to say that by the ingenuity of men of business, there might not some day be formed a relation among twenty persons which, without being strictly either a Company or a Partnership, might yet be an Association. But according to all ordinary rules of construction, if the Association mentioned in Section 4 is not strictly speaking a Company or a

Partnership, it must be something of a similar kind; it must be a relation established between twenty persons or more for the purpose of carrying on business, that is, in order that such company, association, or partnership may carry on the business. The business, therefore, whatever the word "business" may mean, is to be *carried on by those twenty persons or more.*

Cotton, L. J., says, "I do not think it very material to consider how far the word" association." differs from company or partnership, but, I think, we may say that, if *Association* is intended to denote something different from company or partnership, it must be judged by its companions between whom it stands, and it must denote something where the *associates are in the nature of partners.* It seems to me (not that I think it material) that it might have been intended to hit the case which we have frequently seen, of a number of persons or a number of firms joining themselves together for the purpose of carrying on a particular adventure in order to make gain by it, as is very common, where firms, one in London, another in Liverpool and another in the East Indies, join together, in one or more adventures, the one to carry on the one part of the business and the other to carry on the other. But whatever may have been the object of using the word "Association" what we have to consider, in my opinion, is, whether this conglomeration as I will call it, of the persons who subscribe their money under this trust-deed is an association formed to carry on any business within the meaning of this section having for its object, the acquisition of gain." And later on "but supposing there is any business within the meaning of these Acts, is there an association of more than twenty persons who are carrying it on by themselves or their agents? It was argued by Mr. Ince that the mere fact of those persons paying money without any contract or communication with each other into a bank for a common gain to be invested by the trustees under the trusts of this deed, made them an association carrying on business for the purpose of gain. What I have already said as to the true construction of the 4th section shows that, in my opinion, that would not be carrying on business. * * * * * But in my opinion what must be shown is the association by themselves or by their agents to carry on a business." All the three Lords Justices were thus of opinion that an association or company necessarily implies a combination

amongst the members and the establishment of legal relations as between them all. It is not a mere conglomeration, but a union with mutual legal rights and obligations. If our description of a *Kuri* is correct, we think there can be no doubt that the subscribers of the *Kuri* do not form an association or company, and evidently they do not constitute a partnership. In the *Saint James Club Case* 2. De M. & G. 383, Lord St. Leonards *held* that clubs are not partnerships or associations within the meaning of the provisions of the Joint Stock Companies Winding up Acts, because " the individuals who form a club do not constitute a partnership nor incur any liability as such." A number of people may deal with the same person, but what is required to constitute them a partnership, association, or company is that they should deal with each other, and inasmuch as in *Kuris* the subscribers do not contract with each other, or contract jointly with any one, but only enter into a contract each individually with the *Kutti* (called also Karaswau or Muthalpidi, in other districts), it is impossible to hold that the members of a *Kuri* form a company. In this case we may point out that subcriptions due from the subscribers have been treated as the private assets of the Kutti and attached and sold for his private debts. We have already admitted that of late *Kuris* which are really companies are just beginning to come into existence. But our observations relate to the large class of *Kuris* which permeate the length and breadth of Malabar. We do not intend to deal at length with the question whether the object of a *Kuri* is the acquisition of gain by the subscribers. There is, of course, no acquisition of gain by them as a body, because, as we have already observed, they do not form a single legal body for any purpose whatsoever. Whether the object of a *Kuri* is the acquisition of gain by the subscribers individually, is, we admit, a question not free from difficulty. It is, however, quite clear that the subscribers do not carry on any business for the purpose of gain which is neceesary to make Section 4 applicable. The subscribers do nothing but pay a certain amount of money in a number of instalments, and receive the whole amount in a lump from the *Kutti*. It would be difficult to bring this within the term "carrying on business." It is perhaps more doubtful whether the *Kutti* who receives money from a number of persons in instalments, and pays each of them at the end of a period, may not be said to carry

on business. But this point is not material for the question we are now considering. The learned Judges in *Ramasamy Bhagavathar's* case hold that in that case the members of the fund were carrying on a business. They may be right. But a Malabar Kuri is very different from what the fund in that case was assumed to be. The decisions in *Jennings* v. *Hammond* in 9 Q. B. D., 225 and *Shaw* v. *Benson* 11 Q. B. D., 565, 570, *In re Padstow Total Loss and Collision Assurance Association*, 20 Ch. D., 137, 145, no doubt tend to show that a mutual loan society, in which loans are advanced to the shareholders at a low rate of interest, may be carrying on business for the purpose of gain, although the company as a whole does not gain anything by making the loans, but only the shareholders do. On the other hand *Craal* v. *Whymper*, I. L. R., 17 C. 786, *In re Siddall* 29. Ch. D., 1, *The New York Life Insurance Company* v. *Styles*, 14, A. C, 381, *The Queen* v. *Whitmarsh* 15, Q, B. 600, *Moor* v. *Rawlins* 6, C.B, N.S, 289 *Wingfield* v. *Potter* 45 L. T, 612, *Crowther* v. *Thorley* 32 W. R, 330 go to show, that where the substantial purpose of an association is not to carry on a business for the purpose of gain, the fact that gain may accrue incidentally, or may arise from mere subsidiary provisions, does not make registration necessary. It is to be remembered that no subscriber in a *Kuri* is paid by the *Kutti* more than the amount actually advanced by him, and none is paid less than that amount. One who draws his prize early may make a gain by investing his money elsewhere, but with that the Kutti has no concern. It would not, perhaps, be quite right to say that no subscriber has the acquisition of gain as one of the objects in view, when he takes shares in a *kuri*, but most people join it for the purpose of saving. But while a few may gain in fact, their subscriptions to the Kuri bring no profit to others from the *Kutti* or any subscribers. It seems to us clear beyond a doubt that the members of a *Kuri* do not form a company, association, or partnership, and that being so, the question whether the object is to carry on a business for the sake of gain does not arise. It will be necessary, when the question is raised for decision before a judicial tribunal, that the nature of the institution must be put clearly before the Court by evidence, and if that be done, we have no hesitation that the decision in *Ramasamy Bhagavathar's* case will be held to be absolutely inapplicable to Kuris of the ordinary kind. The above observations regard-

ing Kuris in Malabar are equally applicable to similar institutions called Chits, Kuttuchits &c., in the southern districts of the Presidency*.

INDIAN CASE LAW IN 1895.

I.

In this article, we propose to review briefly the Indian Cases reported for the year 1895. We shall begin with the decisions of the Privy Council and then take up the rulings of the various High Courts in such cases as may be of some general importance or otherwise interesting to the litigant public and the profession.

The case of *Asharfi Lal* v. *Deputy Commissioner of Bara Banki*, 22 I. A. 90 strikingly illustrates how Indian Courts sometimes pay too much attention to the flimsiest technichalities of law and enforce strict adherence to them even at the sacrifice of justice. A person had been adjudged a lunatic under Act 35 of 1858 and his estate placed under the Court of Wards. A decree was obtained against the Court of Wards representing the estate of the lunatic. The person who was however guardian of the lunatic's person was not made a party to the suit as representing the lunatic. The question was whether the omission to sue the guardian of the lunatic rendered the decree void for want of jurisdiction. The Judicial Commissioner of Oudh set aside the decrees of the Courts below on the ground of want of jurisdiction under S. 622 C. C. P. The Judicial Committee in reversing this decision observed:—" Even supposing the wife was appointed guardian and that she was guardian at the time the decree of the first Court was made, still the fact remains that the appellant had made party to the suit the Court of Wards, the authority which had the property of the lunatic under its control, and which would have to answer a decree if a decree were made. Even if the guardian were a party, it would not be the guardian who would have to satisfy the decree; the guardian would have to go to the Court of Wards and get the funds to pay with. It is not suggested that the suit was not fully tried out upon the merits, or that any other line of defence

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* On the question whether the acquisition of gain is the object in any particular case I Beaven p. 550, 15 Q. B. 600, and I. L. R., 11 M, 238, may also be referred to with advantage.

could have been raised if the guardian had been party to the suit. The ground, therefore, on which the Judicial Commissioner reversed the decrees of the Lower Courts seems to have been of the very flimsiest character."

In *Sajid Ali* v. *Ibad Ali* 22 I. A. 171 the question as to testamentary capacity arose for decision. It was observed that in deciding an issue of testamentary capacity the court should attend exclusively to the actual facts established by the evidence and not import inferences of fact derived from medical books and judicial dicta relating to other cases. The committee held that in order to constitute an insane delusion it must be shown not only that the testator's belief in it was unfounded, but that it was *so destitute* of foundation that no one except an insane person would have entertained it. It was further ruled that evidence which would disprove capacity to execute a complicated settlement might yet be wholly insufficient to avoid a will of a simple character.

In *Thakur Pershad* v. *Sheikh Fakir Ullah* (22 I.A. 44; I. L. R., 17 A 106), the Privy Council expressly overruled and declared erroneous the ruling in *Sarju Persad* v. *Sita Ram*, I.L.R., 10 A, 71. In *Sarju Persad's Case*, it was ruled that by force of S. 647 C. P. C. S. 373, and other sections applicable to original suits, would apply to execution proceedings and that applications for execution withdrawn or struck off without leave to apply again being expressly granted by the court would not be regarded as affording a fresh starting point under the Limitation Act. This ruling of the Allahabad High Court took the profession by surprise and actually produced great consternation among the litigant public, so much so that the Legislature thought fit to interpose by the passing of Act VI of 1892. Their Lordships pointed out that independently and quite irrespective of Act VI of 1892, S. 647 of the Civil Procedure Code does not on its true construction apply to execution proceedings and that "the proceedings spoken of in S. 647 include original matters in the nature of suits, such as proceedings in probates, guardianships and so forth, and do not include executions." And the Privy Council held that an application for execution of a decree though struck off for default, does still afford a fresh starting point for reckoning limitation.

In *Beti Maharani* v. *Collector of Etawah* (22 I.A., 31, I.L.R., 17 A, 198) a question of limitation arose for decision. It was held that an order of court issued under S. 485 of the Civil Procedure Code and restraining a debtor from paying and the creditor from receiving payment is not an order restraining the *institution* of a suit, within the meaning of S. 15 of the Limitation Act 15 of 1877. "An order in those terms is not an order staying the institution of a suit. There would be no violation of it until the restrained creditor came to receive his debt from the restrained debtor. And the institution of a suit might for more than one reason be a very proper proceeding on the part of the restrained creditor, as for example, in this case to avoid the bar by time, though it might also be prudent to let the court, which had issued the order, know what he was about."

In *Mussummat Lachhan Kunwar* v. *Anant Singh*, (22 I. A., 25), the question arose whether possession taken by a Hindu widow of her husband's estate could be deemed adverse to her husband's reversionary heirs. Adverse possession for the statutory period can only give such an estate as the widow, or other female claimant prescribes for. The Privy Council held that where a Hindu widow takes possession of her husband's estate by excluding preferential heirs such as the son or the son's widow (after the death of the son issueless), her possession must be deemed adverse from the commencement as against all the reversionary heirs of her husband unless it can be shewn that when the widow took possession she claimed only the limited estate of a Hindu widow instead of an absolute title. "The contention that although it (the suit) might be barred as against the son and all persons claiming under him, the effect was only to extinguish those rights and to let in the rights of any persons who would claim as reversionary heirs of Mangal (the last male holder in possession) does not appear to their Lordships to be supported by authority; nor is it tenable unless it were clearly shown that, when Jit Kunwar (the widow) took possession, she professed to do it as claiming only the limited estate of a widow."

In *Mohunt Bhagavan* v. *Mohunt Raghunundan*, 22 I. A., 94, which was a case of succession to a Mutt in *Puri*, the question arose how far the adoption of a *chela* was invalid by reason of leprosy

on the part of the adopting Mohunt. The Judicial Committee held that according to Hindu Law, leprosy must be of a virulent form in order to disqualify a Mohunt from adopting a *chela* by preventing him from taking part in the religious ceremonies of adoption. This expression of opinion must now set at rest a question which has long agitated the Indian Courts.

The case of *Abdul Fata Mahomed Ishak* v. *Russomoy Dhur Chowdhry* (22 I. A. 76) affords a striking illustration of the futility of attempts made under the guise of religious endowments to really evade the law against perpetuities. Overruling the cases *Meer Mahomed* v. *Sashti Churn Ghose* I. L. R., 19 C., p. 412 and *Bikani Mia* v. *Shuk Lal Poddar* I. L. R., 20 C. 116, the Privy Council held that under Mohomedan Law, a perpetual family settlement is not legal though it is expressly made as a *wakfnama* or deed of gift and though there is an ultimate but illusory gift to the poor. By the general law of Islam, at least as shown in India, simple gifts by a private person to remote unborn generations of descendants, that is to say, successions of inalienable life interests are forbidden. And this principle cannot be allowed to be nullified simply because the forbidden transaction is varnished over with an illusory charitable gift. "A gift may be illusory whether from its small amount or from its uncertainty and remoteness. If a man were to settle a crore of rupees, and provide ten for the poor, that would be at once recognised as illusory. It is equally illusory to make a provision for the poor under which they are not entitled to receive a rupee till after the total extinction of a family, possibly not for hundreds of years; possibly not until the property had vanished away under the wasting agencies of litigation or malfeasance or misfortune; certainly not as long as there exists on the earth one of those objects whom the donors really cared to maintain in a high position. Their Lordships agree that the poor have been put into this settlement merely to give it a colour of piety, and so to legalize arrangements meant to serve for the aggrandizement of family." Although *Justice Ameer Ali* has elaborately defended the opposite view there is no doubt that the view of the Privy Council is in support of morality.

In *Guruswamy Pillai* v. *Sivakami Ammal* (22 I. A. 119) the Privy Council had to construe the words "have issue" in a Hindu

will. The will directed "if both my daughters have issue they shall divide the properties equally. Those who have no issue shall enjoy the income for their lives and those who have issue shall enjoy the whole property." The Privy Council adopted the canon of construction that "where the language of a will is clear and consistent it shall receive its literal construction unless there is something in the will itself to suggest departure from it. They accordingly held that upon the literal construction of the will the birth of issue was the contingency on which the gift in each case became absolute and that from the will whose language throughout is clear and consistent there was no reason derivable for reading "have issue" as meaning "leave issue."

Again in *Kishori Mohun Roy* v. *Ganga Bahu Debi* 22 I. A. 183 their Lordships had to construe the expression "stipulated period" as used in Section 8 of the Bengal Regulation 1806. It was held that the stipulated period refers to the period stipulated in the proviso for redemption and that the mortgagee's right to foreclose under Section 8 cannot be accelerated by virtue of any subsidiary provisions in the mortgage deed. The Privy Council formulated their conclusions in these terms "(1) That the period described in Section 8 as the stipulated period must be ascertained by referring to the date fixed in the proviso for redemption, as the date at which the mortgagor may redeem the subject of the security by repaying the capital of the loan, and (2) that the period so ascertained will not be altered or affected by the failure of the mortgagor to make due and regular payment of interest before that period arrives. In their opinion, a separate stipulation which for other purposes, accelerates the time at which the principal is to become due, and makes no provision for the mortgagor making payment in order to avoid forfeiture, cannot legitimately be taken into account in considering what ought to be regarded as "the stipulated period",

The case of *Administrator-General of Bengal v. Prem Lal Mullick* (22 I. A. 107, 22. I. L. R. C. 788) was also a case of construction. It was held that where the executors of a Hindu testator having the whole estate of the deceased vested in them by force of probate granted under the Hindu Wills Act of 1870 transferred the same by deed to the Administrator-General, such transfer was vaild under section 31 of the Administrator-General's Act 1874,

"The right to devolve the property of a deceased testator with all powers and duties relating to its management and administration which is conferred by section 31 of the Act of 1874 is not confined to any particular class of executors or of estates. It is given in broad and comprehensive terms to any and every testamentary executor in whom the estate of the deceased testator have been legally vested by virtue of his probate. The clause attaches only one condition to the exercise of the executor's right which is that no transfer shall be made to the Administrator-General without his consent." Regarding the construction of Indian Acts, the Privy Council has laid down the principle that proceedings of the Indian Legislature cannot be referred to as legitimate aids to the construction of the Acts in which they result. There had been conflicting rulings of the Indian Courts upon the point before this decision. "It is not required that in a consolidating statute each enactment, when traced to its source, must be construed according to the state of things at a prior time when it became law; the object being that the statutory law bearing on the subject should be collected and made applicable to the existing circumstances; nor can a positive enactment be annulled by indications of intention, at a prior time, gathered from previous legislation on the matter."

In *Administrator-General of Bengal* v. *Prem Lal Mullick*, 22 I. A. 203, the question arose how far a court is competent to deal with the receiver it appointed during the pendency of a suit when after the dismissal of the suit questions of accountability of the officer so appointed crop up for decision. The High Court by its decree set aside as illegal a transfer of a testator's estate by his executors-nominate to the Administrator-General, appointed a receiver and directed accounts against the executors. The decree of the High Court was upheld however, by the Privy Council on appeal. Questions of accountability on the part of the executors and receiver had to be settled after the dismissal of the suit. It was held by the Privy Council in the case under notice that the High Court which appointed the receiver, had ample jurisdiction to deal with its officer without the aid of *a pending* suit and that the executors would, remain accountable to the Administrator-General as the transferee of the estate and could not if sued plead *res judicata* in consequence of the Privy Council order directing the dismissal of the Original Suit.

We have in the Indian Reports a number of rulings upon some very interesting points connected with Adoption, Alienation, Inheritance and other branches of the Hindu Law.

The question as to the limits subject to which the doctrine of estoppel may be applied to cases of valid adoptions has been discussed in *Gurulingaswami* v. *Ramalakshmamma*, I. L. R, 18 M, 53; *Parvaetibayamma* v. *Ramakrishna Rau*, I.L.R, 18 M 145; *Santappayya* v. *Rangappayya*, I. L. R, 18 M, 397; The state of the law cannot be regarded as altogether satisfactory as there is a departure from the general principles of the law of estoppel. The principles which govern the applicability of the doctrine appear to be these. No estoppel can arise from ignorance of law which the parties must be presumed to know I. L. R, 18 M, at pages 58, to 60. The fact that the adopter took an active part in making the adoption does not estop the adopting person from subsequently impugning its validity. "In every case of adoption, the adopter must more or less take an active part and to say that because he took an active part he must not disaffirm his act, though it is clearly invalid under Hindu Law is tantamount to repealing it as to the requisites of a valid adoption" I. L. R, 18 M, at p. 151. And the doctrine is applicable only to those cases in which by reason of the invalid adoption, the status of the boy is so irrevocably altered as to render it impossible for him to regain his original position in his natural family either by the operation of the law of limitation or by some other cause. Accordingly where there was acquiescence in the validity of the adoption for only a brief period of 18 months, the doctrine of estoppel was held inapplicable—*Parvatibayamma* v. *Ramakrishna*, I. L. R, 18 M. 145. And where the conduct upon which the plea of estoppel was founded did not as a matter of fact lead to any change of situation, the Bombay High Court held the doctrine not to apply, *Kuverji* v. *Babai*, I.L.R, 19 B. 374. Following the course of decisions in this Presidency, the Madras High Court affirmed the validity of the adoption of an only son and also held that an only son can be validly given away in adoption by his widowed mother even in the absence of any authority from her husband, *Gurulingaswami* v. *Ramalakshmamma*, I.L.R, 18 M 53; while upon the same Principle of *staredecis*, such adoptions have been declared to be invalid in Bombay *Raiji Jadav* v. *Bai Mathura*, I. L. R, 19 B. 658.)

In *Mahadu Ganu* v. *Bapaji Sidu,* I. L. R., 19 B. 239 it was held that an adopted son cannot validly renounce his status as such though he might give up his right of inheritance and that a subsequent adoption made on the strength of such an invalid renunciation of status was invalid. The decision obviously rests upon the principle that a person cannot consent to give up the personal status with which the law invests him and that the continuance of the status is a matter quite independent of the will of the parties concerned.

Again in *Gurulingaswami* v. *Ramalakshmamma* I.L.R, 18 M.53, the High Court laid down the principle that a more distant reversioner can sue to protect his reversionary interest if the nearer reversioners are either in collusion with the widow or other female holder or have precluded themselves from interfering or refused without sufficient cause to institute proceedings or concurred in the act alleged to be wrongful. It is not in every case necessary to prove *fraud* on the part of the nearer reversioners; and refusal on their part to question the act complained of, is not insufficient to justify the plaintiff in suing To the same effect is the ruling of the Bombay High Court in *Ramabai* v. *Ranga Rau* I. L. R. 19 B. 614. This appears to be an extension of the law as hitherto understood, for the right of suit is not confined to cases of fraud on the part of the nearest reversioner.

In *Bhagwan Singh* v. *Bhagwan Singh* 17 A, 294, a full bench of the Allahabad High Court had to consider the question whether the adoption by a Hindu belonging to one of the three regenerate classes and subject to the law of the Mitakshara or Benares school of Hindu Law, of the son of his mothers' sister was a valid adoption or not. A majority of the full Bench has held that such an adoption is valid under that law and that the onus of proving that it is prohibited by usage is upon those who allege that it is illegal. This view is no doubt opposed to the generally received opinion that under the general law such adoptions are illegal. The judgments of the majority which evince great research question the authority of the Dattaka Mimamsa and the Dattaka Chandrika on questions relating to adoption.

The points raised in those judgments deserve very careful attention at the hands of every student of Hindu Law.

We may next notice the decisions relating to alienations by a Hindu Widow. The rulings in *Sheobarat Kuari* v. *Bhagwati Prasad*, I. L. R., 17 A, 523, *Deo Kuar* v. *Man Kuar*, I. L. R., 17 A 1, *Antâji* v. *Dattaji*, 19 B, 36 do not call for any special remark. The case of *Râm Kawal Singh* v. *Ram Kishore Das* 22 C. 506 raises the question as to the extent of a widow's power of alienation for religious or charitable purposes. It was held that she can alienate her husbands' property so as to be binding upon the reversioners in case the alienation is for a religious *necessity* that is to say for the spiritual welfare not of herself but of her husband or the alienation is for a pious purpose and represents only a very small portion of the estate inherited. In *Baroda Kanta Chattapadhya* v. *Jotindra Narain Roy*, I.L.R., 22 C, 974, the point that arose for decision was as to when the entire estate and when only a limited interest passed by an execution sale held in pursuance of a decree against a Hindu widow. In as much as in that case the decree was for a debt which in fact was due by the estate; the court held that the auction purchaser took the entire property and not merely the qualified interest of a widow. The court followed the principle enunciated by the Privy Council in the case of *Jugul Kishore* v. *Jotendro Mohun Tagore* (I. L. R., 10 C, 985). "The case depends on the nature of the suit in which execution issues. There are many authorities to that effect . . . If the suit is simply for a personal claim against the widow then merely the widow's qualified interest is sold and the reversionary interest is not bound by it. If on the other hand the suit is against the widow in respect of the estate, or for a cause of action which is not a mere personal cause of action against the widow, then the whole estate passes. In many of the cases, although the right, title and interest of the widow had been sold, the *whole* interest in the estate was held to have passed and the reversionary heir to be bound by it."

In the case of *Hem Chunder Sanyal* v. *Sarnamoyi Debi*, I.L.R., 22 C, 354 the court had to consider the extent to which a widow in concurrence with the presumptive reversioners at the time, could deal absolutely with her inherited estate.

The court lays down the following propositions as well established. First the widow may relinquish the whole of her interest in her husband's estate and then the next reversioner will acquire the

estate absolutely. See the Privy Council decision in *Behari Lal* v. *Madho Lal*, I. L.R., 19 C, 236. Secondly the widow may convey to the next reversioner or to a third party with the consent of the next reversioner, the whole or any portion of the estate and the transferee will acquire an absolute interest—See the Full Bench decision in *Sarma Roy's case*, I.L.R., 10 C, 1102. The Court further held that it is not however competent for the widow, the next presumptive reversioner, to deal with the property so as to convert her interest in any portion of her husband's estate which *she retains* for herself into an absolute interest freed from all restraint upon alienation. It is worthy of remark that in this case the court ruled and it was necessary so to rule that a *gift* made by a widow to the presumptive reversionary heir will be valid so as to prejudice the rights of all those who in the event might become the actual reversioners at the time of the widow's death. This view is slightly in advance of the widow's power of alienation with the consent of the reversioners for the time being. It appears to be open to some doubt. It virtually holds it legal for a widow to accelerate the succession of the next heir to a *portion* only of her estate. Where the widow "walks out of the scene" altogether, it is intelligible that the existing property passes in its entirety to the next heir; but where she retains a portion of the estate to herself, there arises the anamoly of there being a succession to a portion of the estate while as to the remainder of the estate, there is no succession at all. In *Behari Lal's case* I. L. R., 19 C, 236 the Privy Council observed. :—"It may be accepted that according to Hindu Law, the widow (can accelerate the estate of the heir by conveying absolutely and destroying her life estate. It was essentially necessary to withdraw her own life estate, so that the *whole* estate should get vested at once in the grantee. The necessity of the removal of the obstacle of the life-estate is a practical check on the frequency of such conveyances." Again it is not clear from the authorities whether a widow does not exceed her powers of alienation when she makes a *gift* of a moiety of her estate, though with the consent of the next reversioner; and especially when the donee happens to be the reversioner himself, it is extremely doubtful whether such an alienation could at all be held to be binding upon the reversioner.

In *Ramasami Chetti* v. *Mangaikarasu Nachiar*, I. L. R., 18 M, 113 the Madras High Court answered in the negative the question

whether a Hindu widow was bound to discharge her husband's debts out of the *income* of the estate inherited. *Justice Muthusamy Iyer* said. "The net income is under Hindu Law as administered in this Presidency, her own exclusive property and she is not *bound* either to save or apply it for the benefit of the reversioners." She is however not entitled "to ignore the charges which are legally payable out of the gross income such as the peishcus and maintenance due to other members of the family and thereby add to the debt left by the husband so as to prejudice the reversion." This view may improve the position of the widow but it may be doubted whether it is in accordance with the strict Hindu Law as regards the nature of the widow's right of succession.

In *Krishnaswami Aiyangar* v. *Rajagopala Aiyangar*, I. L. R., 18 M, 73, the Madras High Court had to discuss the question whether when a coparcener sells his undivided share and after paying his debts from the sale proceeds has a surplus left in his hands, that surplus is to be taken as coparcenary property subject to the law of survivorship or to be taken as his self acquired property which will pass to his widow on his death without issue. It was held that the surplus sale proceeds were not divested of the character of coparcenary property and that the lands purchased with that surplus were consequently liable to be dealt with as any other joint family property. The Court said "The sale so far as it produces the surplus was in excess of the requirements of the creditor's equity and amounts to a mere conversion of the coparcenary interest into money or other property, which when warranted by Hindu Law or by the equity engrafted upon it, cannot operate to remove it from the domain of survivorship or to divert the surplus of its character of coparcenary property." The correctness of this decision has been doubted in 5 M. L. J.

The ruling of the Allahabad High Court in *Achhan Kuar* v. *Thakur Das*, I. L. R., 17 A 125, that the next presumptive reversioner under the Hindu Law cannot validly alienate his reversionary interest appears to require some examination before it can be accepted as sound. Is the interest only an interest in expectancy as the Court seems to characterize it? The question whether the interest of a reversioner under the Hindu Law is in the nature of a contingent interest or a vested interest does not appear to be altogether

free from doubt. The element of contingency arises from the fact that it is not certain that the heir presumptive will survive the widow; But there is no doubt at all as to the death of the widow at some time or other and the consequent vesting of the reversion in some one or other though what that one will be, cannot be foretold.

Since the revolutionizing decision of the Privy Council in *Sartaj Kuari* v. *Deoraj Kuari* I. L. R., 10 A, 272 which has upset the course of decisions in India for about half a century, the question whether an impartible estate is inalienable by custom or by reason of its tenure is becoming a vexed question. The Madras High Court in reversal of the finding of the Sub-Court held, upon a review of the evidence, the estate in question to be inalienable by custom *Sivasubramania Naikar* v. *Krishnammal* I. L. R., 18 M, 287. An ingenious argument at the bar to limit the scope of the decision of the Privy Council did not find favour with the court.

In *Ramanada* v. *Raikishori Barmani*, I. L. R., 22 C, 347, it was decided that under the Bengal School of Hindu Law a daughter who is unchaste at the time the succession opens is precluded from inheriting her father's property. In *Abilakh Bhagat* v. *Bhekhi Mahto* I. L. R., 22 C, 864, the court held that under the Mitakshara law a person who has succeeded to the inheritance of property does not lose his right by reason of his subsequent insanity.

In *Balamma* v. *Pullayya* I. L. R., 18 M, 168, it was held that according to the law as settled in the Madras Presidency, a widow can only succeed to her husband's property which was actually vested in him either in title or in possession at the time of his death and that she cannot succeed to a sapinda who survives her husband, even though her husband if he had lived, would have been heir to that sapinda. This view has long been accepted as the law in Madras.

In *Balu Lal* v. *Nanku Ram*, I.L.R., 22 C, 339, we have a most lucid exposition of the legal import of the terms *bandhu* and *sapinda* as used in the Mitakshara. The term *bandhu* is defined in the Mitakshara as '*bhinna gotra sapinda*' that is one sprung from a different *gotra* or family but is a *sapinda* of the person whose estate is the subject of inheritance, that is to say is connected with him by common corporeal particles or by consanguinity. The term "*bandhus*" denotes all those who besides being sprung from a

different family are the heritable *sapindas* of a person either directly or through that person's father or mother. And heritable *sapindaship* consists in mutuality of *sapindaship* between the *propositus* and the person who claims to be his heir. " A *sapinda* of the *propositus,* to be capable of inheriting, must justify a further condition namely that he must be so related to the *propositus* that the *propositus* is also a *sapinda* of him either directly or through the father or the mother." We may also in this connection refer to the very elaborate and at the same time very reliable definitions of heritable *bandhus* given by *Raj Kumar Sarvadhikari—Tagore Law Lectures* of 1880, pages 703, 705.

The case of *Sundrammal* v. *Rangasami Mudaliar* I.L.R., 18 M, 193 is also a case relating to succession by *bandhus.* There it was held that the sister's daughter is not a *bhandu* at all as defined in the Mitakshara. In thecase at *Muttusami* v. *Muttukumarasami* I. L. R., 16 M, 23, the term *bandhu* is explained to denote persons related through females born in or belonging to the family of the *propositus* but in what manner they should be related, has not been shown there. And the case of *Sundarammal* v. *Rangasami* does not contain any explanation at all as to what is meant by *bandhu.* Testing the position of the sister's daughter with the help of the definitions given in the Calcutta case just noticed and in The Tag Law Lectures 1880, pages 703 and 705, it is not clear whether she does not come within the scope of the term *bandhu.* Again in the Madras decision under notice, the High Court decided that they cannot accede to the position that the principle of Hindu Law that in cases of competition males exclude females as in the case of a sister and a sister's son, holds good only in those cases in which the competing claimants belong to the same class of relatives.

They appear to hold that that principle is subject to the "well known principle of Hindu Law that when in the table of succession, one class of heirs ranks above another, the class that is named first must be exhausted before the class that is named next can be let in." The conclusion is irresistible that a female *Atma bandhu* is entitled to succeed in preference to a male *pitru bandhu.*

The decision in *Annapurni Nachiar* v. *Collector of Tinnevelly,* I.L.R., 18 M, 277 decides a very important question of Hindu Law. The Court ruled that for purposes of succession to the estate of an

adopted son taken in adoption by a person having a plurality of wives, the wife who has participated in the ceremonies of adoption has alone to be ranked as the adoptive mother and that the remaining wives should be treated as mere step-mothers and that the former is entitled to succeed in preference to the latter. The correctness of this decision is not altogether free from doubt and its soundness has been attacked with great force in a leading article in this Journal—5 M. L. J. 361. "If a son adopted by a husband in the absence of an only wife or against her wishes can become her son, if a son adopted by a bachelor can become the son of his subsequently married wife, if a son adopted by a widower can become the son of his (deceased) first wife or his wife subsequent to the adoption," it follows that the consent of the wife is unnecessary to effect afiliation, that her co-operation in the ceremony may be dispensed with and that "her association with the husband in the ceremony of adoption is a religious formality which possesses absolutely no legal significance and cannot possibly confer any legal right on her beyond what she may acquire independently of such association". Adoptive maternity then is a legal incident which the law attaches to the relation between the adopter and his wife and is quite independent of the will of the parties concerned. If by declining to associate with himself his only wife, a person cannot divest her of the legal status of maternity, "why should a desire on the part of the husband to exclude all his wives but one be allowed any greater efficacy." ?

With regard to the law of partition, we have had a few decisions from the Bombay and Madras High Courts. In *Subba Ayyar* v. *Ganasa Aiyar* I.L.R., 18 M, 179, it was held that when the father has undivided brothers and when he is alive, the sons can enforce partition against the father's will under the Mitakshara law. "The right to demand partition is in the son; and it is by his will and not by the father's desire the partition takes place." This view is in accordance with a prior decision in Madras (1 M. H. C. R., 77), with the views that have prevailed in Allahabad and Calcutta (5 A, 430 F. B., 12 B. L. R., 373) and also with the view of *Justice Telang* as expressed in his dissenting judgment in I. L. R., 16 B, 29. The case of *Muthusami Mudaliar* v. *Nallakulantha Mudalliar*, I. L. R., 18 M, 418, holds that when a portion of property is reserved for future partition, it does not cease to be co-parcenary

or joint family property and that the previous co-parcenerary must be held to continue *quoad* the property in question.

M. K. VAIDYANATHA IYER.

NOTES OF INDIAN CASES.

Queen Empress v. Venkataratnam Pantulu, I.L.R., 19 M. 14;—We think this decision is likely to work considerable mischief. The learned Judges no doubt expressed themselves somewhat guardedly that at that stage of the proceeding they would not in revision set aside the order of the Magistrate refusing a copy of the charge sheet. The subordinate magistracy is apt to extend the scope of this decision to all cases. It seems to us that the police charge sheet corresponds to the complaint of the private individual on which criminal proceedings are initiated. Section 191 of the Criminal Procedure Code specifies the modes in which criminal proceedings are started, the complaint of a private individual and the report of the police being the modes in which the jurisdiction of the magistrate is invoked. The accused is entitled to a copy of the complaint and for the same reason to a copy of the charge sheet. The fact that the charge sheet may contain matters which are also in the diary is no argument in favour of refusing a copy. For as we have more than once pointed out Section 161 places the result of the investigation by the police on a footing entirely different from the diary under Section 172. See 2, M. L. J., 173.

We think the accused is entitled to the copy, for the charge sheet is the first step in the initiation of Judicial proceedings against him and he cannot be placed in the dark as regards it.

Echaran Patter v. Appu Patter, I.L.R., 19 M., 16. The Subordinate Courts ask for light and they are more enveloped in darkness. The question is one of every day occurrence in the courts of Malabar and the District Judge asks for an intelligible rule. A suit for redemption with a prayer for the recovery of arrears of rent is a thing of every day occurrence in Malabar. *Konna Panikar* v. *Karunakara* I.L.R. 16 M. 328 decided with reference to jurisdiction and apparently the judges intended the same rule to apply as regards court fees that the amount of the mortgage and the arrear of rent would together determine the jurisdiction. In every such suit the decree would be in case the plaintiff succeeded, for the possession of the property on payment of the mortgage amount less the arrear of rent, or if the latter exceeded the mortgage amount, for possession and for excess of rent. The attempt of the learned Judges in this case to distinguish the former can hardly be said to be successful. As regards the Court Fees Act it makes no difference which is in excess.

As regards the Civil Procedure Code, the arrear ought to be set off against the mortgage amount. The decision in the case under notice that the mortgage amount alone should determine the Court Fee seems to be questionable

Sree Ramulu v. Sobhanadhri Appa Rau, I.L.R., 19 M. 21 We are not disposed to question the correctness of the decision. The decision of *Muthusamy Aiyar*, *J.* in *Solhasiadhri Appa Rau* v. *Chalamanna*, I. L. R., 17 M, 225 and certainly his reasoning are open to exception. The attention of the learned Judges does not appear to have been drawn to section 72 of the Rent Recovery Act, but we think it cannot affect the question of limitation. Attention was drawn to the ection in later cases, but the High Court refused to reconsider the decision at p. 21. The rent is payable within the Fusli according to the terms of the tenancy and to give the landlord a right of suit, no decision of a Revenue Court enforcing acceptance of pattah is a condition precedent. In consequence of this decision which however legally correct, has rendered it possible for the tenant to defeat the landlord's claim by holding him at bay, the argument has been used and with success, that "the acknowledgement of the liability to pay rent in the written statement of the tenant in the summary proceedings saves limitation." It seems to us highly discreditable to the Legislature to sit still merely looking on while landlords and tenants are spending their resources on highly ruinous litigation. The Indian Legislatures seem rarely to think of piece-meal legislation which in England seems to be the great merit of Parlimentary legislation. A great evil arises, the public or a portion of it feels hardship and a small bill of 2 sections remedies the evil. But the ponderous machinery of the Indian Legislature requires a great motive power and when the power comes the machine must grind the whole thing to dust. Smoothening the edge here, levelling a little there or stopping hole at another place, this, the Indian Legislature cannot think of.

Kanakayya v. Narasimhulu, I.L.R., 19 M. 38. The decision appears to us to be just. It may look like encouraging the *dog-in-the-manger* spirit of one of the tenants in common but it seems the happiness of both is best secured by insisting upon each acting with the consent of the other. It is not a case however of repair or preservation of the existing state of things in which case it may be proper to hold a different view. But if one wishes to raise the height of a common wall, he must do so with the consent of the other.

Vallaba Valiya Raja v. Vedapuratti, I.L.R., 19 M. 40. There can be no doubt that the High Court has after all enunciated the right view on the question dealt with in the case. The mortgagor who has obtained a

decree for redemption making default in the payment provided for on the date mentioned cannot afterwards execute the decree, for the condition having failed he is not entitled to the benefit which accrues only on the condition being performed. If the decree had been varied under the power conferred by the Transfer of Property Act with regard to the extension of the time of payment there would then be no question of the decree-holder's right to execute the decree if he makes the payment within the extended time. Some of the Judges expressed the view that even though the decree-holder may not be entitled to execute the decree owing to the default, he may bring a fresh suit for redemption notwithstanding the fact that the cause of action was *transit in rem judicatum* by reason of the former judgment. This view no doubt is in accordance with the earlier Madras cases, but we have more than once taken the liberty to question it. See 2 M. L. J. 387.

Ambalavana Pandaram *v.* Vaguran, I. L. R., 19 M. 52. The decision in *Ramasami Chetti* v. *Sokkanadà Chetti*, 1 M. L. J., 737 was certainly wrong and we are glad that the criticism of the Law Journal has been upheld by the learned Judges in this case. There is however, one observation we desire to make. *Best & Subrahmania Iyer, J. J.*, observed that the decision in 1 M. L. J., was not reported in the authorised Law reports and was consequently not a binding authority, and go on to add, that if otherwise they would have felt it their duty to refer the question for decision to the Full Bench. Section 3 of Act 18 of 1875 says that a court shall not receive or treat as an authority binding on it the *report* of any case decided by any of the High Courts other than the report published by the authority of the Governor-General in Council. This observation of the learned Judges was correct as regards the report of the case in the Madras Law Journal. But they had access to the judgment itself of the High Court which did not fall within the purview of the Law Reports Act. It was of course open to the learned Judges to say that they were not bound to follow every decision of a bench of the High Court. It is not a rule of law, but a rule of propriety and of obvious convenience that one Division Bench should follow the decision of another, or refer the question to a decision of the Full Bench, if there is a difference of opinion. The decision that unless both parties signed a contract which is registered the six years' rule would not apply in respect of an obligation created as regards the party signing it, is so obviously incorrect that there is no reason to be dissatisfied with the decision of the Judges not to refer the matter to a Full Bench.

Venkata Narasimha Naidu *v.* Pappammah, I. L. R., 19 M., 54. This is a somewhat extreme instance of the application of the rule laid down by the Privy Council of *res. Judicata* of prior orders in execution as

regards subsequent applications. The decree was declaratory and in favour of one party. At the instance of the opposite party execution was ordered by the Court several times and the prayer carried out in part. The High Court declined to accept an objection to execution on the ground that the decree was declaratory and could not be executed by the party at whose instance it had been. The remarks of the Privy Council in *Halka Singh* v. *Parasram*, 22 I. A., 68 which seem at first sight to be in conflict with the course of earlier decisions of the same tribunal are explained away, but it seems a great pity that the Judicial Committee should have made those observations at all without exactly defining their scope and without reference to the earlier cases.

Chakrapani Asari *v.* **Narasinga Rao**, I.L.R., 19 M., 56. The decision in this case is perfectly right, but the judgment is very brief. It deals very summarily or rather not at all with the number of conflicting earlier decisions which naturally perplexed the referring Judge. Section 8 of the Suits' Valuation Act is decisive on the point. It is only the value of the share that determines the jurisdiction. See. 2, M. L. J. 156.

Somasundara Aiyar *v.* **Fischer**, I.L.R., 19 M., 60. A party to a contract of sale who covenanted for quiet enjoyment is liable for breach of covenant even though he may have been merely a benamidar as regards the ownership of the property sold. He cannot give evidence to prove that he is not liable under the covenant and where an ejectment has been obtained against the purchaser, the covenant for quiet enjoyment is certainly broken. There is no such thing as a benami contract in the law.

Tholappala Charlu *v.* **Venkata Charlu**, I. L. R., 19 M., 62. We confess to have some doubts as regards the correctness of this decision. The suit was for declaration of right to a hereditary office. The explanation to Section 11 specially allows a suit for an office to fall under the category of a suit of a civil nature although the office may be an ecclesiastical one.

Jambuvayyan *v.* **Venkatarayar**, I.L.R., 19 M., 65. There is much force in the arguments of the learned Judges. The Subordinate Court has jurisdiction to enquire into the insolvency of a defendant against whom a decision was passed in appeal though none was passed by the Sub-Court itself. Some difficulty no doubt is naturally created by the words "decree for money *passed by that Court*" Section 360. But the conclusion appears to be sound.

Barrow *v.* **Javar Chand Seti**, I. L. R., 19 M., 67. An application to sanction an arrangement under Section 257 which falls through, is not an application to take a step in aid of execution of the decree. It seems

to us, however, that the learned Judges in holding the application barred, overlooked the fact that a prior application in September 1891 was granted and money realised. In dismissing the application as barred *Shephard and Best J. J.* reversed the decision of *Parker, J.* but the respondent was unrepresented.

Swaminadha Pillai *v.* **Thanga Thanni,** I. L. R., 19 M., 70. One is surprised to be told at this time of day that it has not been actually decided in Madras that a group of heirs succeeding to obstructed heritage do not take it as joint property with rights of survivorship. That, however, seems to be the fact. The law, however, has always been understood to be so.

Rangayya Chetti *v.* **Thannykachala Mudaly,** I.L.R., 19 M., 74. This decision illustrates the logical extension of the principle laid down by the Privy Council in *Gridhari Lal* v. *Kantoo Lal* and cognate cases. Under the Insolvent Act all the right title and interest in real or personal estate of the insolvent vests in the Official Assignee. Therefore the learned Judge holds following the Bombay cases cited by him that the interest of the son in ancestoral property unless the debt was immoral or illegal, vests in the official assignee on the insolvency of the father. And so also the interest of a brother in joint family property if the insolvent brother could dispose of that interest having regard to the nature of the debt.

Wilson *v.* **The Madras Municipality,** I. L. R., 19 M., 83. The case of the bycicle created quite a sensation at the time, but we think there is little doubt that it is taxable under the Municipal Act.

Subbarao Naidu *v.* **Yaganna Pantalu,** I. L. R., 19 M., 90. We can hardly realise the difficulty in this case. The Registrar of the Presidency Small Cause Court gives leave to sue under a rule made by the High Court. When the suit comes on for hearing it is found that the rule is *ultra vires* and that the Registrar consequently had no power to give leave. Without a valid leave the Court had no jurisdiction. The suit is therefore dismissed. A fresh suit is then brought and deduction of the time during which the former suit was pending is claimed. It is common sense and law that it should be allowed. The former suit was dismissed owing to defect of jurisdiction, or at all events owing to other causes of a light nature. So far it is plain sailing. But the difficulty is all created by our case-made law. A number of decisions this way and that are quoted to perplex the Judge. But the principle is clear and the decision easy.

Sadasook Gambier Chund v. Kannayya, I.L.R., 19 M., 96. On the language of Section 37 of the Presidency Small Cause Act the decision of *Best J.* seems clearly right. But the history of the jurisdiction and of legislation *in para materia* obviously lead to the view that unless the decision of a Judge is plainly erroneous or contrary to law there should be no retrial. It is not a review nor an appeal that is provided for by Section 37. There is no reference even to a Full Bench in the Section. But the word retrial suggests a history which gives support to the view of Shephard J. concurred in by his Lordship the Chief Justice.

Vizianagram Maharaja v. Sitarama Razu, I. L. R., 19 M., 100. A suit for Kattubadi is not a suit for money charged on immoveable property under article 132 of the Limitation Act. There can be no doubt that the decision quoted in the foot-note at p. 103 is wrong.

Kupmiah Saheb v. Chidambaram Chetty, I. L. R., 19 M., 105. We are really unable to understand this decision. A second usufructuary mortgagee who is to pay off the prior usufructuary mortgagee and has so paid him sues to recover possession on foot of the usufructuary mortgage. The suit is held not maintainable. But why not? The mortgagor is no party. But why should he be? He was not in possession and the persons who were in possession were made parties. The judgment speaks of concessions by the appellant's pleader, but we confess we cannot understand anything.

SUMMARY OF RECENT CASES.

Mulgeni lease—Adverse possession of Tenant—Limitation.

Budesabvalad Fakirsab *vs.* **Hanmanta bin Ramangauda,** Where a landlord seeks to recover possession of land in his tenant's occupancy from the tenant, and the latter, on the allegation of a perpetual tenancy successfully resists the landlord's attempt to dispossess him for the statutory period, the law of limitation can be successfully pleaded in bar of a suit in ejectment by the landlord, and the tenant if disposed, can under the circumstances, sue to recover back possession,—*Printed Judgments of the Bombay High Court.*

Limitation Act—Sec. V—excuse for delay

Dadabbai Jamsetji *vs.* **Maneksha Torabji,** Where the presentation of an appeal to the proper court is beyond time on account of delay caused by presenting it under a *bona fide* mistake to a wrong

court, it may be sufficient cause within the meaning of Section 5 of the Limitation Act XV of 1871, for the court to extend the time for admitting it.

Sitaram vs. Nimba, I. L. R., 12 B., 320, explained—*Printed Judgments of the Bombay High Court.*

Voluntary Associations—Retirement of Member.

Finche v. Oake [1896 I. Ch. 409 C. A.]

Where a voluntary society has made no provisions in its articles of association for the retirement or expulsion of its members, it often becomes difficult for a member to find out what he has to do to be free of the society. The defendants were the members of a voluntary trade protection society and the plaintiff was one of its members. The object of the society was to supply legal assistance to its members in connection with their trade and for certain other benefits. Each member became such by election and he had to pay an annual subscription of 10*s*. 6*d*. He had no further obligation on his part to perform than that of punctually paying his subscriptions in return for which he was entitled to certain rights. The rules of the association contained no provisions as to the resignation or expulsion of its members. The plaintiff who was a member of the society for the years 1894 and 1895 wrote to the committee of the society on the 30th October 1895 desiring them to withdraw his name from membership in the society. He did not receive any reply till November of the same year; in the meantime he changed his mind and wrote another letter to the committee withdrawing his resignation. The committee however wrote to him in December 1895 that his resignation had been accepted and refused to take the subscription tendered by him for 1896. In a suit by the plaintiff for a declaration that he was a member of the society,

Held: by the Court of Appeal (reversing the decision of *Kekwich J.*)

that the plaintiff was entitled to retire at any moment without the consent of the other members;

that on receipt of his letter of resignation by the society he ceased to be a member of it without the necessity of acceptance on the part of the society;

that after such resignation he cannot withdraw it and can again become a member of the society only by re-election.

Per Lindley L.J.—"In my opinion no acceptance of his resignation is required, though of course he cannot get back the 10*s.* 6*d.* which he has paid. The other members have no power to say that he shall not retire, and there is no law that a resignation which cannot be refused must be accepted before it can take effect."

Partnership—Action for account—Illegal business.

Thwaites *v.* **Coulthwaite** [1896 I. Ch. 496, per *Chitty J.*]

An action by an innocent partner for an account is not barred by the fact that one of the partners was guilty of illegal acts in the conduct of the partnership business, provided the object of the partnership is not illegal, and the plaintiff at the time of entering into the partnership intended it to be carried on lawfully.

The plaintiff was a turf commission agent; and the defendant was a bookmaker. In August 1894 they entered into a partnership as commission agents and bookmakers. The plaintiff was to supply some portion of the capital of the partnership, the business of which was to be solely carried on by the defendant. In September 1894 the partnership came to an end and the plaintiff sued the defendant for an account of the profits. The defendant pleaded that the profits had been earned illegally and under circumstances which brought the partnership under the penalties of the Betting Act of 1853.

Held:—that as a bookmaking and betting business could be carried on without contravening the provisions of the Betting Act, and that as the plaintiff when he entered into the partnership contemplated it to be carried on in the usual way, he was entitled to the account claimed, notwithstanding the illegal acts of the defendant.

Will—Construction.

In re **Sharland Kemp** *v.* **Rozey** [1896 I. Ch. 517 per *North J.*]

A testator bequeathed a fund to certain trustees directing them "to pay to each man that shall have been in my employ in London over ten years the sum of 10£ for each year's service beyond the said ten years.' The will was made in 1889 and the testator died in 1894; the plaintiff who was under his employment for 15 years from 1868 to 1883 claimed 50£ under the will though he left the testator's employment in 1883 and never returned to it.

Held:—by *North J.* that the plaintiff was entitled to the legacy.

Tramway—Bye-law—Reasonableness.

Hunks v. Bridgeman [1896 I. Q. B. D., 253, C. A.]

A bye-law made by a Tramway Company and enforceable by a penalty ran thus "each passenger shall..................when required so to do either deliver up his ticket or pay the fare legally demandable for the distance travelled over by such passenger." A gentleman travelling on the tram-car inadvertently lost his ticket. He had enough money in his pocket to pay his fare over again, but when the ticket collector asked him for the fare on his inability to produce the ticket, he refused to do so. He was then summoned by the Company for the breach of the bye-law.

Held:—that the bye-law was not unreasonable and that the passenger ought to be convicted.

Lowe v. Volp [1896 Vol. I. Q. B. D., 256 C. A.]

A bye-law made by a Tramway Company and enforceable by a penalty ran thus: "each passenger shall shew his ticket (if any) when required so to do to the conductor or any duly authorized servant of the company."

A passenger having paid his fare and received a ticket refused to show it to an inspector of the company, and was summoned for breach of the bye-law.

Held:—that the bye-law was not unreasonable and that the passenger ought to be convicted

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Criminal Law—Forgery.

The Queen v. Riley [1896 Vol. I., Q. B. D., 309. The Court of Crown cases reserved.]

The prisoner was a clerk in the telegraph department in a post office, and he sent a telegram to a book-maker offering a bet on a certain horse for a certain race. The telegram purported to have been handed in prior to the running of the race, and the book-maker accepted the bet and ultimately paid the amount won on that understanding. In reality the telegram had been despatched by the prisoner after he had received the news that the race had been run and won by the horse in question. The prisoner was indicted under Section 38 of the Forgery Act of 1861*

Held:—(by the majority of the Court) that the telegram was a forged instrument within the meaning of Section 38 and that the indictment was good. *Lord Russell of Killowen C. J. and Vaughan Williams J.*

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* Section 38 of the Forgery Act of 1861. "Whosoever with intent to defraud shall......receive.........any chattel, money, security for money or other property whatsoever, under, upon or by virtue of *any forged or altered instrument whatsoever*, knowing the same to be forged or altered" shall be guilty of felony.

were of opinion that the act of the prisoner was a forgery by the common law but were doubtful whether it was an offence under the statute. They however declined to differ from the majority of the court.

It is doubtful whether the case in question would constitute "Forgery" under the Indian Penal Code.

Property in news-paper information—Procuring Breach of Contract—Proof of Damage.

Exchange Telegraphic Co., Limited v. Gregory and Co., [1896 I Q. B. D., 147 C. A.]

An editor of a news-paper has a right of property in information and news which he has paid for and collected for his news-paper and the printing, or multiplying copies or colorable imitations of the information surreptitiously whether before or after the publication of the news-paper is a trespass and an invasion of the right and actionable without proof of any special damage.

In actions for maliciously procuring a breach of contract the accrual of damage is the only thing that brings the injured party in relation to the person who injures. But to prove special damage it is enough if facts be shown from which a Judge or Jury may properly infer that damage must have resulted to the plaintiff by the defendant's Acts.

The Stock-Exchange with the permission of the Committee supplied certain very valuable information to the plaintiffs upon condition that it should be used only in connection with their own business *i. e.*,—communicated to their own subscribers and should not be communicated to certain outside brokers. The plaintiffs paid for and purchased the information and were communicating it, as they were entitled to do, to their own subscribers but also under a condition that the subscribers will not sell or communicate the information to non-subscribers for consideration or otherwise, simultaneously with the communication to the subscribers, the plaintiffs were publishing the information in a news-paper of their own called "the Exchange Co's. Stock Exchange News. The defendant was at one time a subscriber to the Co., and knowing full-well that every subscriber was under a contract not to part with the information to outsiders surreptitiously and maliciously induced a subscriber to communicate the information to him and published it on boards in his office for the purposes of his business. Under such circumstances Mathew, J., gave an injunction preventing the defendants from publishing the information either before or after it was published in plaintiff's

news-paper and from continuing to induce any subscriber of the plaintiffs to supply the defendant with the said information in breach of his contract with the plaintiffs; and the court of Appeal confirmed his Judgment.

It is a great pity that with all the elaborate machinery for reporting the head-note of this important case should be slightly misleading. It is said in the head-note that in actions for malicious procuring of a breach of contract no proof of special damage need be given which, is not accurate. On the other hand (vide Rigby J.'s judgment) what is said is that damage is the gest of the action but that no proof need be given of the actual amount and how it accrued. It is enough if facts be proved from which it may properly be inferred that some damage must have resulted to the plaintiff though the actual amount be unknown.

Practice—Remitting of Suit—Transfer when made.

Derrico v. Samuel and another, [1896 I. Q. B. D, 163 C. A.—

This case decides a matter of great practical importance in processual law. It was decided in this case that where an order has been made under S. 66 of the County Courts Acts for the remission of a case to a County Court the action remains in the High Court until the plaintiff files his plaint and the order in the County Court and till then the High Court has power to pass interlocutory orders in the case.

Under S. 66 of the County Court Act the High Court made an order that a case on its file should be transmitted to the City London Court unless the plaintiff gave security for the defendant's costs within the 12th December 1895. The plaintiff did not furnish security by that time and on the 13th December 1895, before he filed the original plaint in the County Court applied to a Judge in Chambers for an interlocutory order directing the defendant to give further and better answers to certain interrogatories which had been previously administered. The Judge refused to grant the application on the ground that on failure by the plaintiff to furnish the security, the case *exinstanto* was transferred to the County Court's file and that he had no longer jurisdiction to pass any order in it but this decision was reversed by the Court of appeal.

JOTTINGS AND CUTTINGS.

We beg to acknowledge with thanks the receipt of the following Legal publications :—

The Educational Review for April 1896 (*in exchange.*)

Geen Bag for April 1896 (*in exchange.*)

Harvard Law Review for April 1896 (*in exchange.*)

Allahabad Weekly Notes for April 1896 (*in exchange.*)

The Indian Law Magazine for January 1896 (*in exchange.*)

The Albany Law Journal for April 1896 (*in exchange.*)

The Canadian Law Times for April 1896 (*in exchange.*)

Lord Russell on the Administration of Law :—At a banquet given by the Associated Chambers of Commerce, the Lord Chief Justice of England, in responding to a toast, said that there was nothing more essential to the real vitality of commerce than the continuous and just administration of the law on settled principles. Commerce in relation to law occupied this curious position—that to a large extent it had made its own law. A body of usages, fashioned by the needs of the commercial world, and adjusting themselves to the needs of the day, had grown up and come to be known as the law merchant. As to the intelligibility of the law of the land, a good deal depended on what the Houses of Parliament sent to the Judges to interpret. It was a lamentable fact that a very large part of the time of the judges was spent in trying to make sense of Acts of Parliament. As to the expedition of justice, there was a time when science of statement was considered more important than the substance. The law had now emancipated itself from that tradition in civil proceedings, but it was still subject to its trammels in criminal cases. If there was still some delay, a little more liberality on the part of the Treasury in adding a judge or two to the Bench would remove any reasonable ground of complaint. As to cheapness, the law must, to some extent, remain a luxury to litigants. One thing he would say—that the whole system of the remuneration of solicitors was based on a wrong principle. The man who expeditiously came to the point and forewent all the ambulatory movements which the law left open to him was a loser in his pocket. The present system of remuneration was really a premium upon dilatoriness and formularity. In the division of the High Court with which he was connected, an effort had been made to meet the just claims of the commercial community for a rapid settlement of their disputes, and it was to the honour of the solicitors that, although the short and direct courses which the Court had endeavoured to enforce did

not lead to their greater remuneration, they had loyally given their support to the effort to make the settlement of commercial disputes rapid and easy. The success of this experiment was largely due to Mr. Justice Mathew. There were many disputes which were far better settled by the common-sense of business men than by recourse to courts of law; but there were also disputes where questions of far-reaching importance arose affecting many other interests than those immediately concerned and in these cases the courts ought to offer speedy, cheap, and effective remedies.—*The Law Journal.*

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Lord Davey and the Study of Law :—In delivering the Presidential address at the annual dinner of the Birmingham Law Students, Lord Davey directed his remarks to the study of law, as a branch of a liberal education, valuable not only to the lawyer, but to every person engaged in the active business of life. The study of the law, he said, should mean in its highest sense the historical investigation of those regulations which mankind had from time to time, and in different stages of society, laid down for the organisation and preservation of the society into which they were formed, and the adjustment of their social relations. For the purpose of training the intellectual faculties to accuracy of thought and expression, there was, in his belief, no better machinery than the study of the law, as well in the higher sense of jurisprudence as in the patient working out of legal principles to their logical application to particular cases. To men of business, to men engaged in trade and commerce, to directors and secretaries of joint-stock companies, legal questions and difficulties presented themselves at every hour. It would not, of course, dispense with professional assistance—" every man his own lawyer " had not, he believed, been found a very sound maxim, but some knowledge of the way in which lawyers regarded the question, might save them from some scrapes in which they occasionally found themselves. This country at the present time presented unmistakable opportunities for the comparative study of the law, for there was hardly any system of civilized law which did not at this moment govern the legal relations of Her Majesty's subjects in some parts of the British Empire. Passing to the consideration of the means provided in this country for the higher studies he advocated, the President admitted that the sorrowful evidence of indisputable fact compelled him to say that the place given to the study of law was altogether inadequate, and that they were far behind the continental nations and the United States in the public means provided in universities and schools for prosecuting such studies. Both Oxford and Cambridge afforded greater facilities for the study of the law than when he was an undergraduate. They still wanted, however, the recognition of the study of the law as a subject of liberal as well as profes-

sional education on a par with the Faculties of Arts and Science, and they wanted a strong central school of law open to all, and arranged to meet the wants not only of the professional student, but also of the general student. This school, or university should be empowered to grant degrees, which should be required and accepted by the proper authorities as sufficient evidence of general proficiency in law from candidates for admission to every branch of the profession, leaving to those authorities the task of testing a candidate's qualification in strictly professional requirements. The proper seat for such a central school of University was, in his opinion, London; though this need not prevent similar schools being established in Birmingham, Manchester, Liverpool or Leeds.—*The Law Journal*

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The Cause list of Appeal Court I, began on Wednesday with an interlocutory appeal of February 11, and ended on Thursday with a final appeal of the same date. This is the result of the arrangement under which interlocutory appeals that have not been reached on the one day of the week set apart for them stand over until the following week. Delay in the hearing of interlocutory appeals is undesirable, for the speedy trial of actions is often prevented thereby. A better arrangement than the present one would probably be to finish the hearing of the interlocutory appeals which have once been in the cause list before resuming final appeals.—*The Law Journal.*

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Bar Etiquette:—S. H. Lofthouse, Hon. Secretary of the General Council of the Bar, writes to the *Times*, March 12: 'No. 21 of the rules for regulating the practice as to retainers of counsel, drawn up in June 1892, by the Bar Committee, and approved by the Attorney General and the Council of the Incorporated Law Society, is as follows: "21, No counsel can be required to accept a retainer or brief, or to advise or draw pleadings in any case where he has previously advised another party on or in connection with the case, and he ought not to do so in any case in which he would be embarrassed in the discharge of his duty by reason of confidence reposed in him by the other party, or in which his acceptance of a retainer or brief or instructions to draw pleadings or advice would be inconsistent with the obligation of any retainer held by him, and in any such case it is the duty of the counsel to refuse to accept such retainer or brief or to advise or to draw pleadings, and in case he had received such retainer or brief inadvertently to return the same."—*The Law Journal.*

Judge Gary has a dry wit with him that is occasionally the cause of his grim court-room being pervaded by a very audible tittering.

The other day one of the attorneys was airing his indignation. He had been robbed. Yes, sir, robbed. It was shameful the way things went right there under the eyes of the law.

Finally Judge Gary noticed the fuming and fretting one.

"What's the matter now?" he asked.

"Matter? It's a confounded outrage. Had my overcoat stolen right from this room."

The Judge smiled a little.

"Overcoat, eh?" he said. "Pah, that's nothing. Whole suits are lost here every day."—*The Green Bag.*

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"I leave behind me," wrote Lord Campbell, "thirteen huge volumes (XV to XVIII of Adolphus and Ellis, and I to IX of Ellis and Blackburn) of Queen's Bench Reports, chiefly filled with my judgments while I presided in the Queen's Bench. But from the portentous multiplicity of law reports now published, there seems almost a certainty of all the judgments of every judge, however eminent, being speedily smothered. The whole world is now insufficient to contain all the law reports which are published. I remember the time when one good-sized book-case would hold all the books worth consulting. What is the remedy? Perhaps a decennial *auto-da-fe.*"

Lord Campbell would to-day probably recommend an *annual-auto-da-fe.* Certainly one-half the cases now reported might much more fittingly be consigned to the flames than preserved in type.—*The Green Bag.*

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Lord Chief Justice Erle was prone to interrupt counsel when it was found that the judges had already made up their minds against him. On one occasion Mr. Bovill, Q. C., soon afterwards made a judge, was stopped with: "Here we stand, we four men, and we have all firmly (emphasizing the adverb) made up our minds that there must be a new trial; but if you think it worth your while going on after that (playfully), why of course we'll keep on hearing you." Whereupon the Q. C., laughingly sat down, On another occasion he again interrupted with "I beg to inform the counsel, there is a time in the mind of every man

at which he lets down the flood-gates of his understanding, and allows not one more drop to enter'; and that time in my mind has fully arrived." —*The Green Bag.*

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The publication of Indecent evidence Bill, introduced by the Lord Chancellor last week, provides that, where a Judge of the High Court or of the Scotch Court of Session is of opinion that any evidence given before him is of such an indecent character that its publication is likely to be prejudicial to public morality he may order that such evidence shall not be published, and any person who publishes or is a party to the publishing of it in any newspaper, periodical, book, or any other, shall be guilty of contempt of Court and punishable accordingly.—*The Law Journal.*

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Is an Easement Property?:—The Solicitors' Remuneration order 1882, has been so fruitful of points calling for judicial decision, that it is not surprising to find it stated in the preface to the twelfth volume of the recent edition of 'Chitty's statues', that, while the Solicitor's Remuneration Act is useless without the order, the order itself is of little use without the numerous cases which have been decided upon it. We know now, though we have had to wait for Judges to tell us, that in the scale of charges contained in Part II, of Schedule I of the order the words, leases or agreements, for leases at a rack rent, include agreements for tenancies for a less period than three years; and that the words 'freehold property,' in Part I. of the same Schedule include an advowson. It was held, however, in the case of *In-re-Stewart*, L.R. 41 Ch D 494, that grants by way of sale of rights and easements of laying and maintaining pipes in connection with a water works scheme are not 'conveyances of property' within the meaning of the order, on the ground that the grant of a mere easement does not constitute a change of property so as to render the scale applicable. And this apparently extends to a grant of any easement; for in the recent case, *In-re Sanders Settlement*, in which the purchase—money of land taken by the London County Council under their compulsory powers had been invested in the purchase of a right of way, it was held by Justice North, and subsequently by the Court of Appeal that the scale charge did not apply.—*The Law Journal.*

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Equity—Judgment—Bill in equity to vacate.—Final judgment having been rendered in a suit, the defendant brought a bill in equity to have the judgment vacated on the ground of fraud, the fraud alleged being

the false statement by the Attorney of the plaintiff, out of court, that certain allegations in his complaint were true. *Held* no ground for vacating the judgment. *Town of Andes* v. *Millard*, 70 Fed. Rep. 515.

The recent case of *Zellerbach* v. *Allenburg*, 67 Cal. 296, lays down the rule that to vacate a judgment on the ground of fraud, it must appear that the fraud was practised in the very act of obtaining judgment, for any fraud anterior to that is a defence available at law, and therefore concluded by the judgment. It is difficult to formulate a general rule in this class of cases and the above is perhaps too comprehensive. See *Inre O'Neill's Estate*, 63, N. W. Rep. 1042 (Wis); *Noyes* v. *Loeb*, 24 La. Ann. 48. The decision in the principal case however is clearly correct. Nothing appears to take it out of the rule stated above. *Harvard Law Review.*

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Equity—Vendor's lien—Consideration wholly paid.—M. mortgaged to convey to T. an undivided half of certain premises. I gave the full consideration. M died having executed a trust deed to secure a loan, without conveying to T. and T. filed this bill against her administrator for an account and a sale of the premises. *Held* that as specific performance is an inadequate remedy, plaintiff is entitled to a lien on the whole premises.—*Townsend* v. *Vanderwerker*, 16 Sup. Ct. Rep. 258.

It seems well settled now that a vendee has a lien for purchase money paid when specific performance is inadequate or impossible on the same broad equitable ground on which the vendors lien rests. *Galbreath* v. *Reeves*, 82 Fed. 257. *Weckman* v. *Robinson* 14 Wis 493, *Wytnes* v. *Lee* 3 Dreu 396; *Rose* v. *Watson*, 10 H. L. Cas. 672. In the principal case, strangely enough, though the whole consideration has been given, the equitable lien is better for plaintiff than specified performance and the result seems right. The plaintiff has an equitable title to half the premises. As M. charged the estate with a debt, her share should be taken first to pay that off, and so plaintiff should be allowed a lien on the proceeds of the sale after satisfaction of that debt.—*Harvard Law Review.*